

REMARKS

In response to the aforementioned Office Letter, the applicant has revised the claim structure somewhat in order to place the claims in better idiomatic English and to eliminate any noted informalities. In addition, the claims, as amended, are believed to more fully aid in traversing the restriction requirement.

Turning now to the restriction requirement, the applicant urges that this is effectively the second restriction by the same Examiner. In the initial parent patent application, this Examiner did advance a three way restriction requirement and in response to that restriction requirement, the applicant elected the present group of claims. Now the Examiner is again contending that there is still an additional restriction between claims drawn to an alleged reducing composition with an acidic pH and claims drawn to the reducing composition with a stabilizer. In reality, these two groups of claims belong to the same class.

It is urged that whether the claims have a reducing agent or a stabilizer is not definitive per se. The claims could have a reducing agent and moreover, in the presence of that reducing agent could be provided with a stabilizer. The same holds true in reverse in that the claims could be drawn to the reducing agent with the stabilizer and could also call for an acidic pH. In effect, nothing would be accomplished by this type restriction.

The Examiner took the position that the two allegedly different compositions are different inventions in that they have different modes of operation. Exemplary thereof, according to the Examiner, is that the claims of Group 1 operate in an acidic pH. That, however, is the basis for the restriction, namely that certain of the claims contain a reducing agent. However, if a composition contains an acidic pH, it will, by definition, operate at an acidic pH. This is not a different composition than one containing a pH stabilizer. It is the same composition that contains an acidic pH. In short, this is no different than saying a liquid composition having a large acid content is a composition having a negative pH.

The applicant has examined the specification carefully and there is absolutely nothing within the four corners of this application which recite that the composition cannot operate at a positive pH. Moreover, there is nothing in the four corners of this application which recites that a composition containing a stabilizer cannot operate at a positive pH, or for that matter, a negative pH, or both. Consequently, the position of the Examiner is without foundation and should be reconsidered.

Pursuant to §806.06 and §802.01 of the Manual of Patent Examining Procedure, it is provided that the inventions can be considered to be different compositions if they have different modes of operation. However, to recite that the composition of

Group 1 operates at an acidic pH because it has an acidic pH component included therein is not responsive to the Manual of Patent Examining Procedure. To merely say that the composition contains an acidic pH and therefore operates at an acidic pH is not a different mode of operation.

There has been no showing that the inventions are independent or distinct. It is therefore believed that the restriction is without foundation and should be withdrawn.

It should also be recognized that during the prosecution of this application, even if the applicant elected to prosecute the claims of Group 1, there is nothing which precludes the applicant from adding a limitation to the effect that a stabilizer is present in the composition. In like manner, if the applicant elects the claims of Group 2, there is nothing which precludes the applicant from adding limitations to the effect that the composition may have a negative pH. Therefore, this is another reason why the restriction requirement should be withdrawn since the applicant reserves that right to include those limitations which it believes are necessary to prosecute over the prior art.

It appears as though the Examiner may have overlooked the fact that the stabilizer per se does not really add to the reaction or in any way provide a composition which allows for a visual indication of the presence of a potentially harmful metal contaminant in a body of water. All that the stabilizing agent

does is to stabilize. In effect, if the composition were at a positive pH and the stabilizer is added, the composition will tend to remain at that pH or at least at a pH close to that initial positive pH. In like manner, if the composition were at a negative pH and a stabilizer is added, then the composition will remain at that negative pH or, again, at a pH close to that initial negative pH. In short, the stabilizer per se is not really causing the reaction to take place. It should be pointed out that the composition is most operable at a negative pH since a reduction reaction must take place. If the pH is sufficiently high, then an oxidation reaction would take place and this would not allow for the presence of an ionically reducible metal contaminant and the attendant visual indication of its presence.

In order to show the fact that the first ingredient which allows for the pH below 7.0 and with a stabilizer in the same composition, the applicant has added new claim 86. The applicant has only added this one new claim in order to show that a so-called "linking claim" can be added and which would be classified with either the claims of Group 1 or the claims of Group 2. In any event, it is absolutely critical to point out that the applicant nevertheless reserves the right to add a stabilizer to the claimed composition even if the applicant elects to prosecute the claims drawn to the negative pH below 7.0.

Based on the foregoing, it is respectfully urged that little would be accomplished by adhering to the restriction requirement. Since the important facet of the invention is that of a reducing composition, the applicant hereby provisionally elects to prosecute those claims incorporated in Group 1. However, it must again be recognized that the applicant may add a stabilization agent to those claims of Group 1 without destroying the status of those claims. Therefore, it is believed that the application would be better prosecuted without the present restriction and to that end, the Examiner is respectfully requested to withdraw the restriction requirement.

In the event that the Examiner adheres to the restriction requirement, the claims which are elected are the generic claims, namely claims 51-60 and 76-80 and those claims reading specifically on Group 1 or Group II which includes claim 86.

An early action on the merits of the application is respectfully solicited.

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Respectfully submitted,



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RELATED APPLICATIONS

This application is a division of my co-pending U.S. patent application Serial No. 09/739,536 filed December 15, 2000 which is now Patent No. 6,770,783 issued August 3, 2004 for "Determination of Multi-Valent Metal Contamination and System for Removal of Multi-Valent Metal Contaminants from Water."